

The Honorable Paul B. Snyder
Chapter 11
Location: Courtroom H, Tacoma
Hearing Date: Friday, June 11, 2010
Hearing Time: 9:00 a.m.
Response Date: Friday, June 4, 2010

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In re
WASHINGTON MUTUAL, INC.,
Debtor.

Case No. 08-12229-MFW
District of Delaware

Chapter 11

ESOPUS CREEK VALUE LP and
MICHAEL WILLINGHAM

Adversary No. 10-04136

Plaintiffs,

**DECLARATION OF CHARLES
EDWARD SMITH IN SUPPORT OF
WASHINGTON MUTUAL, INC.'S
MOTION TO TRANSFER, STAY, OR
DISMISS THE INSTANT ACTION**

vs.

WASHINGTON MUTUAL, INC.,
Defendant.

I, Charles Edward Smith, declare under 28 U.S.C. § 1746:

1. I am the General Counsel, Executive Vice President, and Secretary of Washington Mutual, Inc. ("WMI"). As WMI's General Counsel, Executive Vice President, and Secretary, with the assistance of WMI's outside counsel and restructuring advisors, I am responsible for general oversight of WMI's chapter 11 bankruptcy case and all proceedings,

DECLARATION OF CHARLES EDWARD SMITH IN
SUPPORT OF WASHINGTON MUTUAL INC'S MOTION TO
TRANSFER, STAY OR DISMISS THE INSTANT ACTION –

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1 litigation, and negotiations pending therein. I am also generally familiar with WMI's
2 businesses, financial affairs, and day-to-day operations. I submit this declaration in support
3 of WMI's Motion to Transfer, Stay, or Dismiss the Instant Action based upon my personal
4 knowledge, unless otherwise stated herein.
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9 2. On September 25, 2008, the Director of the Office of Thrift Supervision
10 appointed the Federal Deposit Insurance Corp. ("FDIC") as receiver for Washington Mutual
11 Bank ("WMB") and advised that the receiver was immediately taking possession of WMB.
12 Immediately after its appointment as receiver, the FDIC sold substantially all the assets of
13 WMB, including the stock of WMB's wholly-owned subsidiary, Washington Mutual Bank
14 fsb, to JPMorgan Chase Bank, N.A. ("JPMC").
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21 3. On September 26, 2008, WMI and one of its affiliates (collectively,
22 "Debtors") filed cases under title 11 of chapter 11 of the U.S. Code in the U.S. Bankruptcy
23 Court for the District of Delaware. These cases were assigned to the Honorable Mary F.
24 Walrath.
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29 4. In the wake of the seizure and sale of WMB's assets, a multitude of disputes
30 arose among, *inter alia*, Debtors, JPMC, and the FDIC (in both its corporate capacity and in
31 its capacity as receiver for WMB), with each asserting claims for billions of dollars against
32 one or more of the others in various forums, including the U.S. District Court for the District
33 of Delaware, the U.S. Bankruptcy Court for the District of Delaware, and the U.S. District
34 Court for the District of Columbia.
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41 5. On March 26, 2010, Debtors filed a proposed joint plan of reorganization (the
42 "Plan"), of which a key component is the proposed global settlement (the "Settlement") of
43 Debtors' claims against, *inter alia*, JPMC and the FDIC, arising from the above-mentioned
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1 September 25, 2008 sale of the WMB's assets to JPMC. Although the provisions of the
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3 Settlement have been agreed to by WMI, JPMC and significant creditor groups of WMI, as
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5 of this date, the FDIC has some remaining concerns. However, discussions among the
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7 parties are ongoing, and they are hopeful that such agreement will be obtained in the near
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9 future.

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11 6. Most of the witnesses whom WMI presently intends to call at any trial in the
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13 Instant Action are current WMI employees, Equity Committee members, Plaintiffs, and
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15 other persons who, we believe, would voluntarily appear at trial.

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17 7. The outcome of the Instant Action could alter WMI's assets and liabilities,
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19 adversely affect creditor recoveries, and interfere with the administration of WMI's estate
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21 and chapter 11 case.

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23 I declare under penalty of perjury that the foregoing is true and correct to the
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25 best of my knowledge and belief.

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27 DATED: May 13, 2010

28 /s/ Charles Edward Smith
29 Charles Edward Smith
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